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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DWAYNE W. OSBORNE,

12 Petitioner,

13 vs.
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15 DOMINGO URIBE, JR., Warden,

16 Respondent.
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CASE NO. 11 CV 0786 MMA (BLM)

**ORDER ADOPTING REPORT
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE;**

[Doc. No. 11]

**DENYING WITH PREJUDICE
PETITION FOR WRIT OF
HABEAS CORPUS**

[Doc. No. 1]

19 Petitioner Dwayne W. Osborne, a state prisoner proceeding *pro se*, filed a petition for writ
20 of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the Board of Parole's decision on July
21 14, 2009 finding him unsuitable for parole. [Doc. No. 1] Respondent Domingo Uribe, Jr. filed a
22 response to the petition [Doc. No. 8], and Petitioner filed a traverse [Doc. No. 10]. The matter was
23 referred to United States Magistrate Judge Barbara L. Major for preparation of a Report and
24 Recommendation under 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d)(4).

25 Judge Major issued a well-reasoned and thorough Report recommending the petition be
26 denied in its entirety. Objections to the Report and Recommendation were due no later than
27 September 20, 2011. To date, Petitioner has not filed any objections.

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Where, as here, the case has been referred to the magistrate judge pursuant to 28 U.S.C. § 636, a district judge “may accept, reject, or modify the recommended disposition.” Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “[T]he court shall make a *de novo* determination of those portions of the [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b). “The statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114,1121 (9th Cir. 2003) (en banc). “Neither the Constitution nor the statute requires a district judge to review, *de novo*, findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d at 1121. Accordingly, a district court is entitled to adopt a magistrate judge’s report and recommendation based on the lack of objections. Nonetheless, the Court has conducted a *de novo* review and agrees that the petition should be denied with prejudice.

Accordingly, in the absence of objections and after conducting a *de novo* review, the Court **ADOPTS** the Report and Recommendation in its entirety and **DENIES WITH PREJUDICE** Petitioner’s petition.

CERTIFICATE OF APPEALABILITY

“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rule 11 foll. 28 U.S.C. § 2254. A petitioner may not seek an appeal of a claim arising out of state court detention unless the petitioner first obtains a certificate of appealability from a district judge or a circuit judge under 28 U.S.C. § 2253. Fed. R. App. P. 22(b). Under 28 U.S.C. § 2253(c)(1), a certificate of appealability will issue only if the petitioner makes a substantial showing of the denial of a constitutional right.

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1 For the reasons set forth in the Report and Recommendation, Petitioner has not made a
2 substantial showing of the denial of a constitutional right. Accordingly, a certificate of
3 appealability should not issue in this action.

4 **IT IS SO ORDERED.**

5 DATED: October 20, 2011

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7 Hon. Michael M. Anello
8 United States District Judge
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